MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016/2017 SESSION

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

8 March 2017
Reading Time: 9.00 am – 9.15 am
(15 Minutes)
Answering Time: 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 5 pages with 4 Questions only.

3. Attempt Question 1 in Part A which is compulsory. Attempt TWO out of THREE questions in Part B. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of Rules of Court 2012. Students are not allowed to lend or borrow statutes during the Examination.

5. Please write all your answers in the Answer Booklet provided.

PART A – COMPULSORY

QUESTION 1

(a) Jaya Handimart Sdn. Bhd. ("JHSB") is in the business of running and operating a DIY superstore at G25, Melaka Mall Complex, Lebuh Raya Ayer Keroh, 75450 Melaka. Pluto Heavy Industries Sdn. Bhd. ("Pluto") is a supplier of hardware, machinery and tools. On 8th August 2016, JHSB executed an agreement with Pluto upon, *inter alia*, the following terms:

- JHSB would pay Pluto the sum of Ringgit Malaysia Twenty Five Thousand (RM25,000) by 26th August 2016 in consideration of Pluto supplying JHSB 'GREAT Professional Tools' of various descriptions ("the Goods").
- Pluto would deliver the Goods to JHSB at its superstore by 30th August 2016.

JHSB instructs your legal firm that it paid the sum of Ringgit Malaysia Twenty Five Thousand (RM25,000) to Pluto on 26th August 2016 as agreed. Subsequently, JHSB was informed in a letter dated 29th August 2016 that Pluto would not be able to deliver the goods to JHSB because the manufacturer was unable to supply the goods to Pluto. JHSB demanded the return of the sum of Ringgit Malaysia Twenty Five Thousand (RM25,000) paid to Pluto. JHSB instructs your legal firm that Pluto has failed to return the said sum.

Draft the proper pleading for JHSB.

(15 marks)

(b) The plaintiff is claiming damages for defamation against the defendant in respect of two statements made by the defendant. The statements were uttered by the defendant at a talk organised by a public university. The first impugned statement or words alleged to have uttered by the defendant are set out in paragraph 6 of the statement of claim. It is now nine months after the close of pleadings and the plaintiff wishes to amend his statement of claim. This is to add a new paragraph (6A) to expressly provide that the impugned statement or words set out in paragraph 6 of the statement of claim referred to and were understood to refer to the plaintiff. It is also to give detailed particulars of the facts and circumstances to show that the impugned statement or words referred to the plaintiff.

State the nature of the proposed application by the plaintiff and discuss the principles governing such an application.

(10 marks)

Continued...

(c) "When the question of the grant or refusal of an interlocutory injunction falls to be considered by the Court, the leading case of *American Cyanamid Co. v. Ethicon Ltd.* [1975] AC 396 immediately comes to mind which has been consistently and faithfully followed in our Courts. The *American Cyanamid's* case provides an authoritative and most helpful approach to cases where the function of the Court in relation to the grant or refusal of interlocutory injunctions is to hold the balance as justly as possible in situations where the main issues between the parties can only be resolved by a trial. However, Lord Diplock himself who gave the definitive opinions in that case admitted later in his judgment in *N.W.L. Ltd. v. Woods* [1979] 1 WLR 1294 that there are limitations in the guidelines."

Alor Janggus Soon Seng Trading Sdn. Bhd. & Ors v Sey Hoe Sdn. Bhd. & Ors [1995] 1 MLJ 241, Jemuri Serjan SCJ

Examine the 'limitations' referred to in the judgement above.

(15 marks)

(Total: 40 marks)

PART B – ANSWER 2 QUESTIONS ONLY

QUESTION 2

(a) The plaintiff claimed against the defendant for breach of an agreement for transfer of shares in a company. The defendant counterclaimed for alleged overpayment of the shares in the sale and purchase transaction. After the case management, the case was fixed for trial on 17 and 18 October 2016. When the case was called up for trial on 17 October 2016, the plaintiff and his counsel were absent. The defendant's counsel and his witnesses were present.

Based on the above, explain how the court may proceed with the case.

(5 marks)

(b) "In the ordinary course of events, a preliminary point of law which does not decide the matter between the parties one way or the other is an unjustified waste of time and occasions an equally unjustified increase in costs. Preliminary points of law have been described as too often treacherous short cuts and their price can be delay, anxiety and expense."

Continued...

With reference to the above, discuss –

(i) whether leave is necessary to try a preliminary question of law.

(5 marks)

(ii) the principles which have been laid down in relation to an application to try preliminary questions of law.

(5 marks)

(c) Shangari sued Selamat for general and special damages due to injuries suffered in a road accident. Shangari alleged that whilst she was riding her motorcycle, a lorry belonging to and driven by Selamat had suddenly entered into her lane from the opposite direction and caused her motorcycle to collide with the lorry. Selamat denied his involvement in the accident. According to Selamat, he saw Shangari's motorcycle crashed into a Kancil motorcar whereby after the accident, the motorcycle fell and slid towards his lorry. Both Shangari's and Selamat's versions of the accident were totally contradicting. Thus the Sessions Court judge ('SCJ') made a finding that Shangari had failed to prove that the accident was caused by Selamat's negligence or that Selamat's lorry was involved in the accident. Shangari intends to appeal against the decision of the SCJ on both issues of liability and quantum.

Advise Shangari on the following –

(i) the procedure for the appeal.

(5 marks)

(ii) the appropriate steps to take if the appeal is out of time.

(5 marks)

(iii) whether evidence not adduced at the trial before the SCJ may be adduced at the appeal.

(5 marks)

(Total: 30 marks)

Continued...

QUESTION 3

(a) By a facility agreement the plaintiff granted banking facilities to the first defendant. The second and third defendants, being directors of the first defendant stood as guarantors to the banking facilities and agreed to pay all moneys owing or remaining unpaid from the first defendant, jointly and severally, upon demand. The second and third defendants in their statement of defence, *inter alia*, pleaded that they did not receive any notice of demand under the guarantee and put the plaintiff to strict proof thereof. At the trial, the plaintiff called four witnesses. The second and third defendants did not testify. Learned counsel for the second and third defendants elected to make a submission of no case to answer.

Explain what 'a submission of no case to answer' is.

(7 marks)

(b) At the hearing of an appeal before the Court of Appeal and on the matter of costs, learned counsel for the respondent submitted that the appellant should be awarded costs on a party and party basis. For the appellant, it was submitted that the appellant should be awarded indemnity costs having regard to all the circumstances of the case.

Distinguish between the above two bases of costs.

(8 marks)

(c) Pursuant to an agreement dated 30 January 2012, Cyber Edu Sdn. Bhd.(CESB) created an education website and supplied computer hardware and software to Ustra IT Sdn. Bhd. (UISB). Invoices totalling RM50,492.00 were issued, but UISB failed to pay. An action was filed in the Sessions Court at Kuala Lumpur and on 21 June 2016, default judgment was entered for the sum of RM50,492.00 together with interest at 8% per annum from the date of judgment to the date of realisation and costs of RM11,330.00. UISB again failed to pay this judgment debt.

Explain the following —

(i) judgement interest.

(5 marks)

(ii) whether UISB can be brought to Court to be examined on its ability to pay the judgment sum.

(10 marks)

(Total: 30 marks)

Continued...

QUESTION 4

(a) "Major amendments have been introduced to enhance the scope of discovery subject to the order of the court."

Discuss.

(5 marks)

(b) The plaintiff company sued the defendant to claim repayment of an interest free loan of RM250,000 (the said loan) lent by the company to the defendant at the latter's request to enable him to purchase shares in the company. A writ and statement of claim was duly served on the defendant. In his statement of defence, the defendant admitted to the said loan but averred that the said loan was illegal as being in contravention of the company's Articles of Association and provisions of the Companies Act 1965.

Based on the above situation –

(i) How would the judge decide which party would have the right to begin at trial?
(5 marks)

(ii) What would be the order of speech if the judge were to direct that the defendant should begin the trial?
(5 marks)

(c) Ghazali sued Azali for goods sold and delivered. After a full trial before the Magistrate, Ghazali successfully obtained a judgment against Azali in the sum of RM10,200. The Magistrate in his decision stated that it was a question of fact whether goods were sold and delivered to Azali. The Magistrate did not believe Azali's evidence. Dissatisfied with the decision, Azali intends to appeal to the High Court and seeks your advice on the following –

(i) the steps Azali should take to commence the appeal;
(3 marks)

(ii) whether the appeal will operate as a stay of execution; and
(5 marks)

(iii) whether the High Court may interfere with the findings of fact by the Magistrate.
(7 marks)

(Total: 30 marks)

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